

OFFICE OF THE SECRETARY OF STATE

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SECRETARY OF STATE

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AND TRIBAL LIAISON



ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 177
OREGON STATE LOTTERY

FILED

09/15/2023 2:21 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Prohibiting Lottery retailer and employees from certain conduct relating to winning tickets and shares

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/27/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Kris Skaro
971-719-0794
kris.skaro@lottery.oregon.gov

500 Airport Rd S
Salem, OR 97301

Filed By:
Kris Skaro
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/16/2023

TIME: 11:00 AM - 12:00 PM

OFFICER: Kris Skaro

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 971-323-0081

CONFERENCE ID: 91250614

SPECIAL INSTRUCTIONS:

Written comment can be submitted to Kris Skaro at kris.skaro@lottery.oregon.gov until 5 p.m. on Friday, October 27, 2023.

The public may also comment at a virtual hearing over Microsoft Teams. Click the meeting URL above to join online on your computer, tablet, or through the Teams app. Or join by phone using the phone number and conference ID above.

If you have questions about how to attend the hearing or comment, please contact Kris Skaro at kris.skaro@lottery.oregon.gov or 971-719-0794.

NEED FOR THE RULE(S)

The Lottery has become aware that some retailer employees were purchasing winning tickets or cash slips from players at a discount. (Winning tickets and cash slips are bearer instruments. A prize winner may "sell" their winning ticket or cash slip at a discount to avoid traveling to Salem or Wilsonville to claim the prize or to avoid tax withholding and certain debt checks, all of which are required for prizes over \$600. A prize winner may also sell their winning ticket or cash slip at a discount if they are given misinformation about prize claim requirements.)

Lottery believes that this behavior by retailers or their employees threatens the fairness, integrity, security, and honesty of the Lottery's operations. The Lottery reviewed its rules and the retailer contract to determine whether this practice is currently prohibited. While some rules suggest this conduct is prohibited (for example, retailers are prohibited from processing prize claims that must be claimed at Lottery (referring to any prize over \$600 or \$1,250 for Video Lottery cash slips) and they are also prohibited from charging a fee to pay a prize), the Lottery is proposing to amend OAR 177-040-0051 to clearly state that it is prohibited. The proposed amendment meets this need by clearly stating that this conduct is prohibited by the Lottery.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- ORS chapter 461 available at https://www.oregonlegislature.gov/bills_laws/ors/ors461.html.
 - Article XV, § 4(4) of the Oregon State Constitution available at https://www.oregonlegislature.gov/bills_laws/Pages/OrConst.aspx.
 - OAR chapter 177 available at <https://secure.sos.state.or.us/oard/displayChapterRules.action?selectedChapter=153>.
 - 2020-2025 Lottery Retailer Contract available upon request to kris.skaro@lottery.oregon.gov.
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STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Lottery does not have much insight into how many players sell their winning tickets or shares or the racial demographics of players who sell versus those who do not. (Most Lottery games are played anonymously and winning tickets and shares are bearer instruments that can be lawfully transferred to another person.) Despite a lack of racial demographic data, Lottery does not believe this will have a disparate impact on any racial group. Tickets and shares will remain bearer instruments, which means a prize winner can continue to sell their winning ticket or share if they want to. The limitation of the proposed rule is that, to ensure the fairness, integrity, security, and honesty of the Lottery, this would not be facilitated by a Lottery retailer or their employees.

FISCAL AND ECONOMIC IMPACT:

The Lottery estimates amending OAR 177-040-0051 will have no fiscal impact on state agencies, including the Lottery, or units of local government. If any current retailer or their employees engage in and profit from the practice of purchasing winning tickets or shares at a discount, they will be negatively impacted by the proposed rule, since the practice will be prohibited. About 3,790 businesses are subject to OAR 177-040-0051, most of which are likely to be small businesses as defined in ORS 183.310, but Lottery identifies no new costs of compliance for small business, other than refraining from purchasing winning tickets and shares from players. See the Lottery's cost of compliance statement for more information.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) Identify any state agencies, unit of local government, and members of the public likely to be economically affected by the rule(s).

The Lottery estimates amending OAR 177-040-0051 will have no fiscal impact on any state agencies, including the Lottery, or units of local government. Any Lottery retailer or retailer employee who currently engages in and profits from the practice of purchasing winning tickets or cash slips from players will be negatively impacted by the rule, since

this practice will be prohibited. The Lottery does not expect this impact to be significant but welcomes comment during the public comment period.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

3,790 Lottery retailers are subject to OAR 177-040-0051 and most, but not all, of these retailers are small businesses as defined in ORS 183.310. (Lottery does not have the information needed to determine exactly how many retailers are small businesses. For example, Lottery does not know how many employees each retailer has. However, in Lottery's experience, and per industry data, most have fewer than 50 employees and would otherwise be considered a small business. There are some, however, such as the multi-state chain retailers, that would not be considered a small business. Thus, Lottery says most of the 3,790 retailers (but not all) are likely to be small businesses.) The types of businesses who are Lottery retailers include: grocery stores, convenience stores, gas stations, bars, restaurants, taverns, bowling alleys, small café eateries, pizzerias, and the like.

(b) Describe the expected reporting, recordkeeping, and administrative activities and cost required to comply with these rule(s);

The Lottery estimates Lottery retailers may need to undertake additional administrative activities relating to informing their employees about the new policy and monitoring the retail location to ensure employees are not engaging in any prohibited activity.

(c) Estimate the cost of professional services, equipment supplies, labor, and increased administration required to comply with the rule(s).

The Lottery estimates minimal cost of increased employee training and monitoring. Lottery already has requirements for retailers relating to processing prize claims. For example, OAR 177-040-0051 already requires each retailer to designate employees to process prize claims that are \$600 or less (or \$1,250 or less for Video Lottery cash slips) during business hours. Presumably, retailers already provide training on processing prize claims and engage in some degree of employee monitoring. Lottery assumes that any new activities required by the rule could be added to current training and monitoring that the retailer already does for its employees. The Lottery welcomes comment from retailers during the rulemaking process.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Lottery did not involve small businesses in the development of these rules but welcomes comment from small businesses during the rulemaking process.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No. The Lottery became aware that some retail locations were purchasing winning tickets and cash slips from players. The Lottery has determined this conduct is not consistent with the fairness, integrity, security, and honesty of the Lottery. While some aspects of this conduct are already prohibited under current rules, the Lottery is proposing to amend its rules to ensure this conduct is clearly prohibited.

AMEND: 177-040-0051

RULE SUMMARY: The Lottery is proposing to amend OAR 177-040-0051 about designated employees and payment of

prizes. The proposed amendment will clearly prohibit certain conduct by retailers and their employees relating to winning tickets or cash slips from players at the retail location.

The Lottery may make alternative changes in response to public comment or other information received during the public rulemaking process. The Lottery may also make non-substantive changes to improve the readability, organization, clarity, and accuracy of the rule such as, but not limited to, updating the statutory citations in the rule.

CHANGES TO RULE:

177-040-0051

Designated Employees and Payment of Prizes ¶

(1) Designated Employees: A traditional Lottery retailer must designate employees authorized to redeem winning Lottery tickets and shares. A Video Lottery retailer must designate employees authorized to redeem Video Lottery cash slips as defined in OAR 177-200-0005(1).¶

(2) Traditional Lottery Retailers: A traditional Lottery retailer must redeem winning Lottery tickets and shares during all of the retailer's designated hours of redemption.¶

(3) Video Lottery Retailers: Except for those cash slips required to be validated and paid by the Lottery, during all business hours of operation a Video Lottery retailer must redeem any Video Lottery cash slip presented for payment that was issued at that retailer's location, except as follows:¶

(a) In the event of exceptional circumstances, a retailer may delay validation and payment of a cash slip for a period of time not to exceed 24 hours from the time the cash slip is initially submitted to the retailer for payment. "Exceptional circumstances" means rare and unforeseen circumstances beyond the reasonable control of the retailer; and¶

(b) Within 48 hours from the time the cash slip is initially submitted to the retailer for payment, the retailer must submit to the Lottery a written report of the delay of payment and the exceptional circumstances that required the delay.¶

(c) The Director may review claims of exceptional circumstances and determine whether delayed payment was appropriate under the circumstances. Upon the Director's request, the retailer must provide the Director with evidence supporting a claim of exceptional circumstances. If a retailer fails to comply with a request or fails to adequately support a claim of exceptional circumstances, the Director shall find that the delay was not appropriate.¶

(d) If the Director finds that the delay was not appropriate, the retailer's delay of payment shall be considered a failure to perform contract duties or requirements, and the Lottery may take appropriate action including termination of the retailer contract. The Director's decision is final.¶

(4) Payment: Except as provided in section (3) of this rule, a retailer must immediately pay prizes in cash or by check, or any combination thereof, when a winning Lottery ticket or share meeting the requirements of these rules is presented for payment, including a Video Lottery cash slip. A retailer must not pay prizes in tokens, chips, or merchandise or charge a fee for paying a prize or for issuing payment.¶

(5) A retailer and their employees may not purchase winning tickets or cash slips from players or provide misinformation to players about prize claim requirements or aid a prize claimant in avoiding tax withholding or debt offsets required by law.¶

(6) Validation: Notwithstanding section (3) of this rule, once a Lottery retailer validates a winning ticket or share, including a Video Lottery cash slip, the retailer must immediately pay it. The Lottery's terminal will not validate a cash slip issued for a Jackpot Prize.

Statutory/Other Authority: Or. Const. Art. XV, ¶ 4(4)(a), ORS 461.120, 461.217, 461.250, 461.300, 461.715, 461.719

Statutes/Other Implemented: Or. Const. Art. XV, ¶ 4(4), ORS 316.194, 461.560, ORS 461.120, 461.217, 461.250, 461.300, 461.715, 461.719, ~~461.560~~